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SUBJECT: GEORGIA: SEEKING JUSTICE AT THE ICJ

Classified By: Ambassador John F. Tefft for reasons 1.4 (b) and (d).

11. (C) Summary. On March 5, Poloff meet with Deputy Minister of Justice Tina Burjaliani to discuss the status Georgia's response to the International Criminal Court (ICC) and other pending legal cases in international courts. The Deputy Minister noted that Georgia is a state party to the ICC and Russia is not -- a fact which imposes significantly different burdens on the two sides. As a result, Burjaliani indicated that Georgia's government has chosen not to respond to any pending complaint in the ICC and will focus on pursuing charges of ethnic cleansing against Russia in the International Court of Justice (ICJ). End summary.

12. (C) In response to inquiries from Post, Burjaliani told poloff that Georgia has not received an official request from the International Criminal Court, although she was aware that a Russian citizen (or other entity) may have filed a complaint against Georgia in that venue. Nonetheless, she did not believe that the ICC should exercise jurisdiction. Because there has not been a formal referral to the ICC, which according to Burjaliani is a prerequisite to initiating a criminal complaint, the ICC prosecutor would not have the jurisdiction to open a case against Georgia. According to the Deputy Minister, Georgia's lawyers believe that any Russian individual or entity attempting to open a case against Georgia in the ICC would violate the Rome Treaty, which in their view limited the ICC to only consider cases of international significance. She argued that the current complaint, as she understood it, did not meet this bar. She noted that Russia was not a state party to the ICC and, therefore, would be under no obligation to cooperate with the prosecutor to provide evidence, whereas Georgia, as a state party, would have such an obligation. Georgia preferred not to utilize its limited resources fighting a case in this venue where no objective conclusion would be possible and Russia would not be bound by any negative decision.

13. (C) Burjaliani said that MOJ attorneys were focused on finding the right venue to proceed with Georgia's cases and she asserted that the International Court of Justice was the best venue for proceeding with claims against Russia on charges of ethnic cleansing. MOJ lawyers were concerned that they select the right venue -- since the choice would establish precedents for future cases. According to the Deputy Minister, Georgia's legal team holds the ICJ in high regard, but was also considering the European Court of Human Rights as another option. Nonetheless, Georgia has taken the position that it will not respond to any pending complaint in the ICC to ensure that any actions in that fora will not prejudice their charges of ethnic cleansing against Russia with the ICJ.

TEFFT